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California Regional Water Quality Control Board

Santa Ana Region

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Arnold Schwarzenegger
Governor

September 24, 2007

Kirk Gilligan
U.S. Fish and Wildlife Service
San Diego National Wildlife Refuge Complex
Seal Beach Naval Weapons Station
800 Seal Beach Boulevard, Building 226
Seal Beach, CA 90740

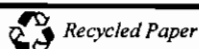
CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR NASA ISLAND ROAD CULVERT REPLACEMENTS, SEAL BEACH NAVAL WEAPONS STATION (ACOE REFERENCE NO. 2007 – 1090 – YLC)

Dear Mr. Gilligan:

On August 10, 2007, we received an application for Clean Water Act Section 401 Water Quality Standards Certification (Certification) for replacement of two culverts under NASA Island Road at the Seal Beach National Wildlife Refuge, Seal Beach Naval Weapons Station. This letter responds to your request for certification that the proposed project, described in your application and summarized below, will comply with State water quality standards outlined in the Water Quality Control Plan for the Santa Ana River Basin (1995) and subsequent Basin Plan amendments:

Project Description: Replacement of two corroded corrugated metal pipe culverts with corrugated polyethylene culverts. The culverts are located within the Seal Beach National Wildlife Refuge beneath NASA Island Road within tidal wetlands that are a part of the Seal Beach National Wildlife Refuge. The culverts maintain hydrology to portions of the Refuge and the road provides access to a least tern nesting site. The project will result in temporary impacts to wetlands. The culverts are located near one another in an un-sectioned portion of Township 5 South, Range 13 West of the U.S. Geological Survey *Seal Beach, California* 7.5-minute topographic quadrangle map (33.73869 degrees N/-118.07279 degrees W and 33.73780 degrees N/-118.07143 degrees W, Site 1 and Site 2 respectively).

California Environmental Protection Agency



Receiving water: Seal Beach National Wildlife Reserve Wetlands.

Fill area: 0.0009 acres of temporary impact to wetland shoreline (20 linear feet total).

Dredge/Fill volume: N/A

Federal permit: U.S. Army Corps of Engineers Nationwide Permit Nos. 3 and 13.

Should the proposed project impact state- or federally-listed endangered species or their habitat, implementation of measures identified in consultation with U.S. Fish and Wildlife Service and the California Department of Fish and Game will ensure those impacts are mitigated to an acceptable level. Appropriate Best Management Practices will be implemented to reduce construction-related impacts to Waters of the State. This project will occur in an area that is less than one acre. Therefore, coverage under the State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity, Water Quality Order 99-08 DWQ, is not required.

Construction de-watering discharges, including channel diversions, are regulated under Regional Board Order No. R8-2003-0061, General Waste Discharge Requirements for Discharges to Surface Waters that Pose an Insignificant (De Minimis) Threat to Water Quality. For more information, please review Order No. R8-2003-0061 at www.waterboards.ca.gov/santaana/pdf/03-61.pdf.

You have applied for Nationwide Permits from the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act. You have submitted a Negative Determination to the California Coastal Commission. The U.S. Navy has determined that the project is categorically excluded from the requirements of the National Environmental Policy Act (NEPA). The Executive Officer has determined that the project qualifies for a Class 1 Categorical Exemption from the California Environmental Quality Act (CEQA), pursuant to Section 15301 of the CEQA, Guidelines, in Title 14 of the California Code of Regulations.

This 401 Certification is contingent upon the execution of the following conditions:

- 1) The discharger shall implement an effective combination of best management practices to reduce pollutants in storm water and non-storm



water discharges from the project site to the maximum extent practicable using best available technology and best conventional technology.

Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality certification actions:

- (a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section §13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.
- (b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection §3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- (c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.

Although we anticipate no further regulatory involvement, if the above stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, we may formulate Waste Discharge Requirements.

In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.

In response to a suspected violation of any condition of this certification, the Santa Ana Regional Water Quality Control Board (Regional Board) may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Board deems appropriate. The burden, including costs, of the reports shall be reasonable in relation to the need for the reports and the benefits to be obtained from the reports.

In response to any violation of the conditions of this certification, the Regional Board may add to or modify the conditions of this certification as appropriate to ensure compliance. Pursuant to California Code of Regulations Section 3857, we will take no further action on your application. Please notify our office five (5) days before construction begins on this project.

This letter constitutes a Water Quality Standards Certification issued pursuant to Clean Water Act Section 401. I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of Sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received Water Quality Certification" which requires compliance with all conditions of this Water Quality Standards Certification. Order No. 200-0017-DWQ is available at www.swrcb.ca.gov/resdec/wqorders/2003/wqo/wqo2003-0017.pdf

Should there be any questions, please contact Adam Fischer at (951) 320-6363, or Mark Adelson at (951) 782-3234.

Sincerely,



GERARD J. THIBEAULT
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Jae Chung
State Water Resources Control Board, OCC – Erik Spiess
State Water Resources Control Board, DWQ-Water Quality Certification Unit – Bill Orme
California Coastal Commission – Ryan Todaro
California Department of Fish and Game, Ontario Office – Naeem Siddiqui
U.S. EPA, Supervisor of the Wetlands Regulatory Office WTR- 8 – Eric Raffini and David Smith

